

## Remarks

Applicant appreciates the considered Official Action of May 6, 2004. In response, Applicant has attempted to place this application in condition for allowance by claim amendments of form that do not affect the broad scope of his inventions and their equivalents. In addition, claims 5, 16, 21 and 22 have been cancelled without prejudice to further pursuing such claims in a Continuation or Continuation-In-Part Application.

To fully respond to the objections of the Official Action, claim 17 has been converted to an independent claim and consequently, it no longer needs to depend from a previous claim. In addition, claim 26 has been amended to be dependent on claim 25, thus overcoming the stated rejection.

Claims 8 & 28 have been amended to include the word "and" as suggested by the Examiner, while claims 12 & 50 have been rewritten to provide antecedent support for each term of claim as suggested. In addition, the phrase "by segment" has been deleted from claim 18 eliminate surplusage and to better define the broad scope of the invention.

As noted earlier, rejected claims 5, 16, 21, 22 have been cancelled without prejudice. In addition, claims 6 and 23 have been rewritten in independent form as suggested by the Examiner and rejected claims 7 and 24 have been amended to be dependent upon these rewritten claims. As a result, they contain subject matter acknowledged to be allowable.

Again, the Examiner's attention is invited to Claims 33 and 34 and to the explicit limitations of these claims that are not found in the applied Kelderman reference—limitations that clearly preclude a proper rejection under 35 USC § 102. Kelderman is directed to a confocal measuring microscope having a movable table supporting a specimen to be examined. A use for this complex device is said to be is measuring the "thicknesses of thin

film coatings applied to wafer surface” (Kelderman, column 7, line 41+). The device has optics that permit the user to locate particular spots of the object on the supporting platform 12 which, along with the specimen wafer (not the instrument), can be moved in X, Y and Z directions.


Contrary to this reference, Applicant does not claim a microscope with a movable platform and has no desire to measure the thickness of a wafer. Clearly, the problems, the uses, and the objectives of Kelderman are totally different, inapposite and non-analogous to those claimed by the present inventor. Importantly, the Examiner’s assertion that the target light of Kelderman “is used to aim the sensing unit” is in error. Indeed, nothing in Kelderman suggests or teaches that the sophisticated confocal, measuring microscope can be moved or aimed. Instead, and **as clearly stated by Kelderman, he teaches “moving the object 14 in X or Y directions or both** either manually or with motors 16. (See column 10, line 9-13 of Kelderman). Unlike Kelderman, Applicant claims a portable apparatus, not a movable specimen, and its claimed purpose is that of “aiming the sensing unit” not the specimen.

Without question, several limitations of claims 33 and 34 are not to be found in the Kelderman reference, *i.e.*, it does not show a portable sensing unit that has a target light for “aiming” the sensing unit. As a result, the rejection under 35 USC 102 is clear error. **Indeed that statute requires that each and every limitation be disclosed in a single prior art reference.** See *Gechter, et. al. v. Davidson, et. al*, 116 F.3d 1454 (Fed. Cir. 1997) and *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251 (Fed. Cir. 1988). Here, such limitations are not so disclosed and accordingly, the rejection is in error. It should be withdrawn.

Moreover, in light of the Inventor's compliance with the gracious suggestions of the examiner, the remaining claims of this application should be passed to issue and immediate notice of allowance is respectfully requested.

Should the Examiner disagree with the position of the Inventor with respect to the foregoing changes and arguments, it is requested that the amendments herein be entered for purposes of appeal and that early notice of such be provided to the applicant. Finally, in the event that the Inventor's counsel has overlooked or failed to comply with the Examiner's suggestions that would result in allowance, a telephone call to that effect would be most appreciated.

Respectfully submitted,



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#### **Certificate of Express Mail**

I, Dorsey L. Baker, hereby certify that the foregoing amendment together with a Petition for Extension of Time and a properly completed Credit Card Payment Form are being deposited in Express Mail of the United States Postal Service (EU329541005US) properly addressed to Commissioner for Patents, PO Box 1450, Alexandria, Virginia 22313-1450 this 7<sup>th</sup> day of September, 2004.



Dorsey L. Baker